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Chief Executive Officer

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March 4, 2009

To: Supervisor Don Knabe, Chairman
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Supervisor Michael D. Antonovich

From: William T Fujioka
Chief Executive Officer

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STATUS REPORT ON GRAND AVENUE PROJECT (ITEM #49-C, AGENDA OF FEBRUARY 17, 2009)

At the February 17, 2009 Board of Supervisors meeting, the Board directed my office to prepare a status report on the Grand Avenue Project concerning the project schedule, identifying all delays and extensions and provide the report within two weeks.

Project Schedule

The chronology of the project schedule construction date, as approved by the Grand Avenue Authority (JPA) is as follows:

- In the Development and Disposition Agreement (DDA) approved in February of 2007, the Construction Commencement Date (CCD) was identified as October 1, 2007.
- In November 2007 the Related Cos. (Developer) claimed *force majeure* under the DDA due to litigation filed by the Bonaventure Hotel which extended the deadline out 256 days. The new CCD became June 13, 2008.
- In June of 2008 the JPA agreed to a two-month extension to allow for the Grand Avenue Committee (GAC) to work with the Developer to define new milestones in light of worsening economic conditions.

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- In July of 2008 the JPA approved a seven-month extension to allow for the completion of 80 percent construction documents to provide more information to lending institutions (as compared with 50 percent construction documents which had previously been the industry standard). The new CCD became February 15, 2009. In exchange for the extension the Developer agreed to pay \$250,000 for each additional month of delay beyond the new CCD for up to two years.

Modified Extension Agreement

On February 9, 2009, the JPA met in closed session and gave instructions to the GAC to respond to the Developer's request for a modified extension agreement. Those negotiations resulted in the following modifications to the extension agreement:

- Current two-year extension period through 2011 remained unchanged.
- Developer allowed to defer payment of \$250,000 per month until construction starts, and, at whatever point in the next two years that is, a lump sum payment is due for the cumulative months of delay.
- Developer to pay \$100,000 per year (for two years) for the expenses of the GAC, payable as \$25,000 per quarter.
- Developer to pay \$113,000 in prior GAC legal expenses.
- Developer could drop the Letter of Credit (LoC) that had previously been required under the extension agreement. The LoC had guaranteed the Developer's financial commitment to the JPA to spend a certain minimum amount while completing the 80 percent construction document level.
- If the Developer proposes to go beyond the current two-year extension period then he will have to demonstrate that no comparable, large scale projects have received funding in the United States.
- The JPA is not required to grant a new extension but must negotiate in "good faith".
- Developer agreed to waive claims arising from certain provisions of the DDA (i.e. the JPA keeps the \$50 million in pre-paid ground rent).

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Additional Questions

During the February 17, 2009 Board of Supervisors meeting, additional issues were identified to be included in this status report that were not covered under the Schedule and Modified Extension Agreement components of this status report.

Bonaventure Litigation Settlement: The litigants (the plaintiff hotel and Developer) reached a private and confidential settlement and the case was dismissed on November 14, 2007.

Partnership Funding Agreements: The Developer's partnership agreements call for additional investors to contribute capital for the pre-development and development of the Grand Avenue Project. Those documents control how capital is contributed and how it is spent. The JPA is not a party to those agreements and would not know how they are implemented.

The JPA does not rely on the agreements between the Developer and its partners for protection. The DDA and Ground Lease with the Developer have a series of provisions designed to assure that the Developer has adequate financial capacity to develop the project. These include a net worth test, the requirement for a completion guaranty from a credit worthy parent entity and a guaranteed maximum price construction contract in place before the Developer gets control of the site. The JPA remains in a strong negotiation position with the Developer since pre-paid ground rent for the site has already been received.

If you have any questions about the information contained in this report, please call me or your staff may call John Edmisten at (213) 974-7365.

WTF:DL
JSE:mc

c: Executive Officer, Board of Supervisors
County Counsel
Grand Avenue Committee